No. 90-967

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

GUY WOODDELL, JR.,

Petitioner,

—v.—

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO. 71, *et al.*,

Respondents.

ON WRIT OF *CERTIORARI* TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION FOR LEAVE TO FILE AND BRIEF *AMICUS CURIAE* OF THE ASSOCIATION FOR UNION DEMOCRACY AND THE AMERICAN CIVIL LIBERTIES UNION, IN SUPPORT OF PETITIONER

Steven R. Shapiro
(*Counsel of Record*)
John A. Powell
Helen Hershkoff
American Civil Liberties Union
Foundation
132 West 43 Street
New York, New York 10036
(212) 944-9800

Susan M. Jennik
Association for Union Democracy
500 State Street
Brooklyn, New York 11217
(718) 855-6650

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MOTION OF THE ASSOCIATION FOR UNION DEMOCRACY AND THE AMERICAN CIVIL LIBERTIES UNION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The Association for Union Democracy (AUD) and the American Civil Liberties Union (ACLU) respectfully move for leave to file the annexed brief *amicus curiae* in this case. Petitioner has consented to the filing of this brief; respondents have refused to give their consent.

The AUD is a nonprofit corporation founded in 1969 which seeks to further democratic principles and practices in American labor organizations, both by encouraging union members to participate actively in the life of their unions, and by protecting the exercise of their democratic rights within their unions. No other organization devotes itself primarily to this objective.

The sponsors of the Association include former leaders of major unions, religious leaders, members of union public review boards, lawyers, prominent educators in labor studies and labor law, and numerous union members. Despite divergent backgrounds, all share the view that the labor movement is one of the great forces which helps sustain democracy in our national life and that, if the labor movement is to serve this purpose, union leaders must be responsive to their members, and unions must be democratic and just in their internal operations.

The ACLU is a nationwide, nonprofit, nonpartisan organization with over 275,000 members dedicated to the principles of liberty and equality embodied in the Constitution. For over forty years, the ACLU has supported efforts in Congress and in the courts to recognize and strengthen the rights of union members to internal union democracy. Indeed, as commentators have noted, the legislative campaign that eventually culminated in the enactment of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) "was formally launched by the American Civil Liberties Union [when it] submitted a 'Trade Union Democracy' Bill to the Congress during the 1947 hearings on new labor legislation." Aaron, "The Labor-Management Reporting and Disclosure Act of 1959," 73 Harv.L.Rev. 851 (1960). *See also* Rothman, "Legislative History of the 'Bill of Rights' for Union Members," 45 Minn.L.Rev. 199, 201-06 (1960).

Because the right of union members to enforce their

democratic rights is implicated by this case, the AUD and the ACLU respectfully seek leave to submit this brief *amicus curiae* for the Court's consideration.

Respectfully submitted,

Steven R. Shapiro

Steven R. Shapiro
(*Counsel of Record*)
John A. Powell
Helen Hershkoff
American Civil Liberties Union
Foundation
132 West 43 Street
New York, New York 10036
(212) 944-9800

Susan M. Jennik
Association for Union Democracy
500 State Street
Brooklyn, New York 11217
(718) 855-6650

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INTEREST OF *AMICI*

The interest of the Association for Union Democracy (AUD) and the American Civil Liberties Union (ACLU) is set forth in the accompanying motion for leave to file this brief *amicus curiae*.

STATEMENT OF THE CASE

Petitioner is a member of respondent International Brotherhood of Electrical Workers (IBEW), Local No. 71. He brought this suit under Title I of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §401, *et seq.*, alleging (1) that the union discriminated against him in job referrals as retaliation for his opposition to an announced increase in union dues and the appointment of certain union representative, and (2) that the disciplinary proceedings initiated against him by the union violated due process. In addition, petitioner contended in his complaint that respondents' actions were inconsistent with the union constitution, and that this breach was redressable in federal court under §301(a) of the Labor Management Relations Act (LMRA), 29 U.S.C. §185(a).

The lower courts held that petitioner was not entitled to a jury trial of his claim under the LMRDA and that the federal courts do not have jurisdiction over suits for violation of union constitutions, if those suits are brought by union members.[1] In reaching this conclusion, the court of appeals relied on its earlier decision in *McCraw v. Plumbers and Pipefitters*, 341 F.2d 705, 709 (6th Cir. 1965), to deny petitioner's right to a jury trial, without analyzing whether the statute or the Seventh

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[1] Citing this Court's decision in *Breininger v. Sheet Metal Workers*, ___ U.S. ___, 110 S.Ct. 424 (1989), the Sixth Circuit reversed the district court's dismissal of petitioner's claim under Title I.

Amendment required a jury trial. The court of appeals also relied on an earlier decision, *Trail v. Teamsters*, 542 F.2d 961, 968 (6th Cir. 1976), to deny federal jurisdiction under §301(a) for suits brought by union members to enforce union constitutions, despite this Court's intervening decision in *Plumbers & Pipefitters v. Local 334*, 452 U.S. 615 (1981), which upheld the right of a union local to enforce the union constitution under §301(a).

SUMMARY OF ARGUMENT

I. Union members suing to enforce rights guaranteed by Title I of the LMRDA, 29 U.S.C. §§411-15, are entitled to a trial by jury. The structure and legislative history of Title I establish the intent of Congress to provide for a jury trial. In part because it did not want to deprive union members of a jury trial in Title I enforcement cases, Congress rejected a proposal to allow only the Secretary of Labor to enforce Title I rights in favor of a proposal allowing individuals to bring suit. This construction of the LMRDA, supported by the terms of the statute and the legislative history, allows the Court to avoid reaching the constitutional question of whether a trial by jury of Title I claims is required by the Seventh Amendment.

If the Court determines it must resolve the constitutional issue, the result is the same: the Seventh Amendment requires a jury trial, upon demand, of actions brought under Title I. The Court has developed a two-part test to determine whether the Seventh Amendment requires a jury trial: (1) whether the action is analogous to any 18th century English action at law prior to the merger of law and equity; and (2) whether the remedies sought are legal in nature. Title I actions meet both parts of this test. First, actions brought to enforce rights created by statute are most closely analogous to personal injury actions that were recognized by the common law.

Second, legal remedies, including compensatory and punitive damages, are available in Title I actions and have been awarded to numerous Title I plaintiffs.

II. Section 301(a) of the LMRA, 29 U.S.C. §185(a), creates a federal cause of action for union members seeking to enforce a union constitution.[2] That result follows logically from this Court's decisions that local unions may sue under §301(a) for violation of a union constitution, *Plumbers & Pipefitters v. Local 334*, 452 U.S. 615, and that individual employees may sue under §301(a) for violation of a collective bargaining agreement, *Smith v. Evening News Ass'n*, 371 U.S. 195 (1962). Moreover, the plain words of the statute grant jurisdiction based on the existence of a contract (including a union constitution), not on the identity of the party seeking to enforce the contract. There is no indication in §301(a) or its legislative history that Congress meant to prohibit suits by individual union members.

ARGUMENT

I. PLAINTIFFS SEEKING DAMAGES UNDER TITLE I OF THE LMRDA ARE ENTITLED TO TRIAL BY JURY

A. Congress Intended To Provide A Right To Jury Trial When It Enacted Title I

The LMRDA was enacted to alleviate two serious and related problems within the labor movement: the corruption and racketeering that had been exposed by the McClellan Committee (the Select Senate Committee on Improper Activities in the Labor or Management

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[2] By arguing for federal court jurisdiction, *amici* are not suggesting that state court actions to enforce union constitutions are preempted by federal law; that is a separate issue that the Court need not address at this time.

Field), and the autocracy and lack of democracy that characterized the internal governance of many unions. *See* S.Rep. No. 187, 86th Cong., 1st Sess. 2 (1959), *reprinted in* NLRB, Legislative History of the LMRDA 398 (1960)(hereinafter "Leg.Hist."). Title I therefore specifies certain rights of union members and provides for enforcement of those rights in the federal courts.

The provisions of Title I are modeled on the Bill of Rights in the United States Constitution, *Steelworkers v. Sadlowski*, 457 U.S. 102, 111 (1982). Indeed, the legislative proposal that eventually became Title I was introduced in Congress under the heading "Bill of Rights of Members of Labor Organizations." *See Finnegan v. Leu*, 456 U.S. 431, 435 (1982). Consistent with that description, §101(a)(1), 29 U.S.C. §411(a)(1), grants members equal rights to participate in union affairs; §101(a)(2) grants members the right to freedom of speech and assembly, 29 U.S.C. §411(a)(2); §101(a)(3) grants members a secret ballot vote on dues increases, 29 U.S.C. §411(a)(3); §101(a)(4) protects the right of members to sue their union, 29 U.S.C. §411(a)(4); and §101(a)(5) grants members due process in union disciplinary proceedings, 29 U.S.C. §411(a)(5).

Title I was added to the proposed bill regulating internal union affairs, S.1555, in an amendment offered by Senator McClellan. 2 Leg.Hist. 1102. In describing the purpose of his amendment, Senator McClellan stated: "[T]he rights which I desire to have spelled out in the bill are not now defined in the bill. Such rights are basic. They ought to be basic to every person, and they are, under the Constitution of the United States." *Id.* at 1104-05.

Under the McClellan amendment, however, the judicial enforcement of Title I rights would have rested sole-

ly with the Secretary of Labor. *Id.* at 1102.[3] One of the issues expressly raised during the floor debate was the impact of this enforcement procedure on jury trials. *Id.* at 1111-14. In the words of Senator John F. Kennedy:

> . . . I stood on the floor of the Senate and voted for jury trials in all cases of injunction with respect to voting rights. Yet the [McClellan] amendment . . . would deny the right of jury trial in all cases involving the rights of millions of Americans if the Secretary of Labor gets an injunction. I do not see how any Senator who voted for the right of jury trial in voting cases can deny the right of all theses citizens to a jury trial.

Id. at 1112.

In response to these and other concerns, Senator Kuchel introduced a substitute Bill of Rights, which was adopted on April 24, 1959. 2 Leg.Hist. 1239. Of particular relevance, the Kuchel amendment created a private right of action for union members seeking to enforce the substantive provisions of Title I.[4] As enacted, §102 does

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[3] The proposed amendment provided as follows: "Sec. 103. The Secretary, whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, may bring an action in a district court or other court of the United States for such relief as may be appropriate including, but without limitation, injunctions to restrain any such violations and to compel compliance with this title. Any such action against a labor organization may be brought in the United States District Court for the District of Columbia or in the district court or other court of the United States where the violation occurred or is about to occur." 2 Leg.Hist. 1102.

[4] Section 102 of the Kuchel amendment provided as follows: "Any person whose rights secured by the provisions of this title have been infringed may bring an action in a district court of the United States for such relief as may be appropriate. Any such action against a labor

(continued...)

not expressly refer to jury trials. But the fact that the plain language of the statute does not resolve the jury trial issue only means that the Court must "determine congressional intent, using [its] traditional tools." *Dole v. United Steelworkers*, ___ U.S. ___, 110 S.Ct. 929, 934 (1990). *See also NLRB v. Food & Commercial Workers*, 484 U.S. 112, 123 (1987).

Here, it is clear from the legislative history that one of the principal reasons for eliminating the role of the Secretary of Labor in Title I enforcement actions was to provide for the right to a jury trial. In discerning legislative intent, this Court has often looked to the statements of individual legislators as relevant (albeit not dispositive) evidence. *See, e.g., Brock v. Pierce County*, 476 U.S. 253, 263 (1986); *Grove City College v. Bell*, 465 U.S. 555, 567 (1984). More generally, this Court has recognized in analogous contexts that a congressional decision to substitute (or supplement) government enforcement with private enforcement is the sort of structural change that strongly suggests congressional intent to provide for jury trials.

For example, in *Lorillard v. Pons*, 434 U.S. 575 (1977), the Court held that there is a right to jury trial under the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. §621, *et seq.*, even though the statute does not expressly provide for a jury trial. The Court examined the legislative history of the ADEA and was persuaded that the congressional decision to provide for a private right of action, rather than vest sole enforcement powers with the Secretary of Labor, supported

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[4] (...continued)
organization shall be brought in the United States district court for the district where the alleged violation occurred or where the headquarters of such labor organization is located." The words "(including injunctions)," which appear in the enacted statute, were added in conference. *See* H.R. Conf. Rep. No. 1147, 86th Cong., 1st Sess. (1959). 1 Leg.Hist. 934.

the inference that Congress intended to provide for a jury trial when aggrieved individuals brought suit under the ADEA. *Id.* Similarly, it should be inferred that Congress intended to protect the right to a jury trial for Title I claims when it rejected a plan to place enforcement of Title I rights under the exclusive province of the Secretary of Labor.

If this Court agrees that the jury trial issue in this case can be resolved based on a fair interpretation of the statute itself, it need not reach the constitutional question, in compliance with the "cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the [constitutional] question may be avoided." *United States v. Thirty-seven Photographs*, 402 U.S. 363, 369 (1971), *quoted in Curtis v. Loether*, 415 U.S. 189, 192 n.6 (1974). Should this Court reach the constitutional question, however, the result is the same.

B. The Right To A Jury Trial Guaranteed By The Seventh Amendment Applies To Title I Actions

The Seventh Amendment provides that "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." The Court long ago determined that the Seventh Amendment's jury trial guarantee is not limited to the common law forms of action recognized in 1791, but extends to "all suits which are not of equity and admiralty jurisdiction, whatever may be the peculiar form which they may assume to settle legal rights." *Parsons v. Bedford*, 28 U.S. (3 Pet.) 433, 447 (1830), *quoted in Curtis v. Loether*, 415 U.S. at 193.[5]

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[5] It is not dispositive, therefore, that the legal status of unions was, at best, uncertain in 1791. The regulation of labor in England began in (continued...)

The test developed by the Court for determining whether the Seventh Amendment protects the right to trial by jury of any particular issue was stated most recently in *Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*, ___ U.S. ___, 110 S.Ct. 1339 (1990):

> To determine whether a particular action will resolve legal rights, we examine both the nature of the issues involved and the remedy sought. "First, we compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity. Second, we examine the remedy sought and determine whether it is legal or equitable in nature." The second inquiry is the more important in our analysis.

Id. at 1345 (citations and footnote omitted).[6] Actions

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[5] (...continued)
1349 with the enactment of the Ordinances of Laborers, 23 Edw. 3, cc. 1,2 (1349), followed by the Statute of Laborers, 25 Edw. 3, ___ (1351), which regulated terms of labor contracts. Although unions were not specifically outlawed, combined action of workers was held to be a common law conspiracy in *Rex v. Journeymen Tailors of Cambridge*, 8 Mod. 10 (1721). In the United States, the first reported trike of workers occurred in 1741 and was apparently a spontaneous action. The Philadelphia Cordwainers, recognized as the first U.S. trade union, was organized in 1794. Adopting the English common law conspiracy theory, U.S. courts convicted Cordwainers' leaders of criminal conspiracy in 1806, as reported in Commons and Gilmore, *Documentary History of American Industrial Society*, vol. 3, 59-236 (1910). *See generally* Commerce Clearing House, *Labor Law Course* ¶¶500-01 (17th ed. 1967); Weyrauch, *Fundamentals of Labor Law* 2, 77 (2d ed. 1957); Gregory, *Labor and the Law* 13-30 (1946).

[6] A third consideration, not relevant here, is "whether Congress has permissibly entrusted the resolution of certain disputes to an administrative agency or specialized court of equity, and whether jury trials (continued...)

under Title I meet both parts of this test.

1. Actions Brought Under Title I Are Analogous To Actions At Common Law

Actions brought under Title I seek to enforce democratic rights granted by the statute. This Court has repeatedly held that actions to enforce statutory rights are subject to the right to a jury trial. *Lytle v. Household Mfg., Inc.*, ___ U.S. ___, 110 S.Ct. 1331 (1990)(Civil Rights Act); *Curtis v. Loether*, 415 U.S. 189 (fair housing laws); *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 477 (1962)(trademark laws); *Porter v. Warner Holding Co.*, 328 U.S. 395 (1946)(Emergency Price Control Act); *Texas & Pacific R. Co. v. Rigsby*, 241 U.S. 33 (1916) (Safety Appliance Act); *Hepner v. United States*, 213 U.S. 103, 115 (1909)(immigration laws); *Fleitmann v. Welsbach Street Lighting Co.*, 240 U.S. 27 (1916)(antitrust laws). Such actions are closely analogous to actions at common law and, thus, are protected by the Seventh Amendment's jury trial guarantee.

Curtis v. Loether, 415 U.S. 189, is particularly relevant. The question in *Curtis* was whether the Seventh Amendment applied to actions to redress violations of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3612. Answering that question in the affirmative, this Court extended its ruling beyond Title VIII, stating broadly: "The Seventh Amendment does apply to actions enforcing statutory rights, and requires a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordi-

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[6] (...continued)
would impair the functioning of the legislative scheme." *Granfinanciera, S.A. v. Nordberg*, ___ U.S. ___, 109 S.Ct. 2782, 2790 n.4 (1989). Congress explicitly granted jurisdiction of Title I claims to federal courts, not to any administrative agency or specialized court of equity, LMRDA §102, 29 U.S.C. §412.

nary courts of law." *Curtis, 415 U.S.* at 194. The *Curtis* Court also found: "A damages action under [Title VIII] sounds basically in tort -- the statute merely defines a new legal duty, and authorizes the courts to compensate a plaintiff for the injury caused by the defendant's wrongful breach." *Id.* at 195.

Actions under Title I of the LMRDA, like actions under Title VIII of the 1968 Civil Rights Act, also "sound[] basically in tort." Indeed, this Court has already held that the most closely analogous state court action to enforcement of Title I rights is an action for personal injury. *Reed v. United Transportation Union*, ___ U.S. ___, 109 S.Ct. 621 (1989).[7] The issue in *Reed* was the appropriate statute of limitations to be applied to Title I actions. The Court rejected the argument that LMRDA actions were like hybrid §301/duty of fair representation actions,[8] and declined to adopt the six-month federal statute of limitations applied to such hybrid actions in *DelCostello v. Teamsters*, 462 U.S. 151 (1983). Instead, the Court found that actions to enforce the free speech rights of union members under §101(a)(2) of the LMRDA were most closely analogous to actions to enforce constitutional rights under 42 U.S.C. §1983, which "are governed by state general or residual personal injury statutes of limitations. *Owens v. Okure*, [109 S.Ct. 573 (1989)]; *Wilson v. Garcia*, [471 U.S. 261 (1985)]. *See also Goodman v. Lukens Steel Co.*, 482 U.S. 656 (1987) (applying state personal injury statute to federal civil rights action against a private party brought under 42 U.S.C. §1981)." *Reed v. United Transportation Union*, 109 S.Ct. at 626-27.

[7] Much of modern day personal injury law has developed from the common law action for trespass on the case. *See Owens v. Okure*, ___ U.S. ___, 109 S.Ct. 573, 581 n.11 (1989). *See also* Plucknett, *A Concise History of the Common Law* 468-72 (1929).

[8] Individual employees may sue under §301 of the Labor Management Relations Act (LMRA), 29 U.S.C. §185, to enforce rights conferred on them by collective bargaining agreements between their employers and their unions. *Smith v. Evening News Ass'n*, 371 U.S. at 200. But the employee must exhaust contractual grievance procedures, including arbitration, before suit is filed, *Republic Steel v. Maddox*, 379 U.S. 650 (1965), unless the union breached its duty of fair representation in handling the grievance. *Vaca v. Sipes*, 386 U.S. 171 (1967); *Hines v. Anchor Motor Freight*, 424 U.S. 554 (1976). A lawsuit in which an employee seeks to enforce both the collective bargaining agreement against the employer, and the duty of fair representation against the union, is known as a "hybrid" action.

While *Reed* dealt explicitly with §101(a)(2), its rationale applies with equal force to the other enumerated rights in Title I, all of which can be analogized to §1983 claims and the personal injury actions that they resemble. The right to equal participation in union affairs guaranteed by §101(a)(1) clearly has analogs in the Equal Protection Clause. The right to a secret ballot on dues and assessment increases, guaranteed by §101(a)(3), reflects at least penumbral rights under the First Amendment. The right of members to sue their union, §101(a)(4), and to procedural regularity in disciplinary proceedings, §101(a)(5), plainly derive from due process principles. In short, statutory enforcement actions under Title I flow just as directly from the common law as constitutional actions under 42 U.S.C. §1983, which are heard before juries on a daily basis in federal courts around the country.

2. Actions Under Title I Are Subject To The Seventh Amendment Right To Jury Trial Because Legal Remedies Are At Stake

Plaintiffs suing to enforce their rights under Title I of the LMRDA may seek actual, compensatory and punitive damages. These remedies are legal in nature, and therefore embraced by the jury trial guarantee of the Seventh Amendment.

The availability of money damages in Title I actions

is supported by both the broad statutory language and the case law construing it. The statute itself provides for "such relief (including injunctions) as may be appropriate." 29 U.S.C. §412. As this Court and other courts have recognized, the parenthetical reference to injunctive relief presumes the availability of money damages. Thus, in *Boilermakers v. Hardeman*, 401 U.S. 233 (1971), the Court rejected the union's argument that a Title I action seeking damages but no injunction should be dismissed. *Id.* at 239-40. Indeed, the Court observed that the statutory language "contemplates that damages will be the usual, and injunctions the extraordinary form of relief." *Id.* at 230.

Reflecting that view, the lower courts have granted monetary damages for a wide range of injuries in Title I suits. *See generally* M. Malin, *Individual Rights within the Union* at 123-29 (1988). For example, courts have awarded damages for lost wages, *Murphy v. Operating Engineers, Local 18*, 774 F.2d 114, 126 (6th Cir. 1985), *cert. denied*, 475 U.S. 1017 (1986); *Shimman v. Frank*, 625 F.2d 80, 100 (6th Cir. 1980); *Ryan v. IBEW, Local 134*, 387 F.2d 778 (7th Cir. 1967). Courts have also awarded damages for physical injuries, if they are proximately related to a statutory violation. *Compare Shimman v. Frank*, 625 F.2d 80, *with McCraw v. Plumbers & Pipefitters*, 341 F.2d at 710. In addition, the weight of authority allows damages for injury to reputation, *Keeffe Bros. v. Teamsters, Local 592*, 562 F.2d 298, 304 (4th Cir. 1977); *Simmons v. Textile Workers, Local 713*, 350 F.2d 1012, 1019-20 (4th Cir. 1965); and for emotional distress, if accompanied by physical or economic injuries, *Guidry v. Operating Engineers, Local 406*, 882 F.2d 929, 943-44 (5th Cir. 1989); *Murphy v. Operating Engineers, Local 18*, 774 F.2d 114; *Bise v. IBEW, Local 1969*, 618 F.2d 1299, 1305 (9th Cir. 1979), *cert. denied*, 449 U.S. 904 (1980); *Bradford v. Textile Workers, Local 1093*, 563 F.2d 1138, 1144 (4th Cir. 1977).

Punitive damages were disallowed in some early cases, *McCraw v. Plumbers & Pipefitters*, 341 F.2d 705 (6th Cir. 1965); *Magelssen v. Plasterers, Local 518*, 240 F.Supp. 259 (W.D.Mo. 1965); *Burris v. Teamsters*, 224 F.Supp. 277 (W.D.N.C. 1963). However, since the Fifth Circuit's leading decision in *Boilermakers v. Braswell*, 388 F.2d 193 (5th Cir.), *cert. denied*, 391 U.S. 935 (1968), most circuits have allowed punitive damage awards under Title I, *Quinn v. DiGiulian*, 739 F.2d 637 (D.C.Cir. 1984); *Parker v. Steelworkers, Local 1466*, 642 F.2d 104 (5th Cir.), *reh'g denied*, 646 F.2d 567 (5th Cir. 1981); *Bise v. IBEW, Local 1969*, 618 F.2d 1299; *Vandeventer v. Operating Engineers, Local 513*, 579 F.2d 1373, 1380 (8th Cir.), *cert. denied*, 439 U.S. 984 (1978); *Cooke v. Painters, District 48*, 529 F.2d 815 (9th Cir. 1976); *Morrissey v. National Maritime Union*, 544 F.2d 19, 25 (2d Cir. 1976).[9]

Compensatory and punitive damages are remedies at law which require a jury trial on demand. *See Granfinanciera, S.A. v. Nordberg*, 109 S.Ct. at 2793-94; *Curtis v. Loether*, 415 U.S. at 196. The application of this principle to LMRDA cases is reinforced by the Court's recent decision in *Chauffeurs, Teamsters, and Helpers, Local 391 v. Terry*, 110 S.Ct. 1339, holding that plaintiffs in hybrid §301/duty of fair representation cases are entitled to a jury trial. If anything, the jury trial issue in *Terry* presented a much closer question than this case. The *Terry* Court found, nevertheless, that the Seventh Amendment required a jury trial on demand in duty of fair representation actions against a union even though the most

[9] In *IBEW v. Foust*, 442 U.S. 42 (1979), the Court held that punitive damages were not allowable in hybrid §301/duty of fair representation cases against unions. The majority expressly reserved decision on the availability of punitive damages under the LMRDA, *id.* at 47 n.9; four Justices, in concurrence with the result on the facts of *Foust* but in disagreement with an absolute rule denying punitive damages, explicitly approved of punitive damages in LMRDA actions.

closely analogous 18th century English action was an equitable claim against a trustee for breach of fiduciary duty. 110 S.Ct. at 1345-47.[10] Citing *Curtis v. Loether*, 415 U.S. at 196, the *Terry* Court emphasized that plaintiffs were seeking monetary relief and that "an action for money damages was 'the traditional form of relief offered in the courts of law.'" 110 S.Ct. at 1347.[11]

The remedy sought in the instant case is similar to that sought in *Terry*: wages and benefits lost because of the union's retaliatory discrimination in job referrals. Like *Terry*, these monetary damages, sought not from the employer as restitution but from the union as a proximate injury caused by the union's statutory violation, are legal in nature. And, like *Terry*, a union member seeking such damages pursuant to Title I is entitled to a jury trial under the Seventh Amendment.

The requirement for a jury trial in Title I cases is especially appropriate. Title I is intended to protect the basic democratic rights of members of labor unions. One of the basic democratic rights of citizens of our country is the right to a jury trial. Union members who

[10] Justice Marshall's opinion on this issue was joined by Chief Justice Rehnquist and Justices White and Blackmun. Justices Kennedy, O'Connor and Scalia, in a dissenting opinion, agreed with Justice Marshall that the most closely analogous 18th century English form of action was in equity but would have held that there was no right to a jury trial. Justice Stevens concurred with the result of the majority opinion but concluded that a duty of fair representation action was most closely analogous to an action at law for attorney malpractice. Justice Brennan concurred with the result of the majority opinion but focused on the nature of the remedy sought rather than the search for an analogous 18th century English form of action.

[11] The plaintiffs in *Terry* alleged that, due to their union's failure to represent them properly, they lost wages and benefits which they would have received from their employer. The Court held that, unlike backpay damages sought against an employer which may be equitable restitutionary relief, backpay damages sought from a union were not equitable but legal in nature. *Id.* at 1348.

seek to enforce the democratic guarantees provided by Title I are entitled to have their claims heard and decided by a jury.

II. FEDERAL COURTS HAVE JURISDICTION UNDER §301(a) OF THE LMRA OVER ACTIONS BROUGHT BY UNION MEMBERS TO ENFORCE UNION CONSTITUTIONS

A. Union Constitutions Can Be Enforced In Federal Court Under §301(a)

Union constitutions set the rules for governance of the union.[12] They describe officers' positions and their duties; they also set terms of office and election procedures. Constitutions regulate convention procedures, including the election of delegates eligible to vote at conventions. The relationship between the local and national or international organization, including trusteeship provisions, is defined in the union constitution. Membership duties, including dues obligations, are set forth in the union constitution. Grounds for discipline, and for trial and appeal procedures, may be found in the constitution. It may also contain other important provisions, regarding officers' salaries, union committees, the frequency of local union meetings, strike benefits, and contract ratification votes.

Section 301(a) of the LMRA, 29 U.S.C. §185(a), provides federal court jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affect-

[12] Generally, national and international unions are governed by "constitutions" and intermediate and local labor organizations are governed by "bylaws." Sometimes the terms are used interchangeably. To avoid confusion, the term "constitution" will be used herein to refer to the documents containing the rules governing all levels of union organization.

ing commerce as defined in this Act, or between any such labor organizations." The primary legislative purpose in enacting §301(a) was to "promote industrial peace." S.Rep. No. 105, 80th Cong., 1st Sess. 17 (1947), *reprinted in* NLRB, Legislative History of the Labor Management Relations Act 423 (1949)(hereinafter "LMRA Leg.Hist.").

In *Plumbers & Pipefitters v. Local 334*, 452 U.S. 615, the Court held that a local union could sue its parent organization under §301(a) to enforce the union's constitution, as a contract between labor organizations. The Court rejected the requirement, adopted by several lower courts at the time,[13] that §301(a) provided jurisdiction only over contracts which "potentially have a significant impact on labor-management relations or industrial peace . . . ." *Id.* at 623 (citation omitted). While acknowledging the significant interest in stability of labor relations, the Court noted an additional legislative purpose of §301(a):

> [A]pparently Congress was also concerned that unions be made legally accountable for agreements into which they entered among themselves, an objective that itself would further stability among labor organizations. Therefore, §301(a) provided *federal* jurisdiction for enforcement of contracts made by labor organizations to counteract jurisdictional defects in many state courts that made it difficult or impossible to bring suits against labor organizations by reason of their status as unincorporated organizations.

[13] *Alexander v. Operating Engineers*, 624 F.2d 1235, 1238 (5th Cir. 1980); *Stelling v. IBEW*, 587 F.2d 1379 (9th Cir. 1978), *cert. denied*, 442 U.S. 944 (1979); *Hospital & Health Care Employees, Local 1199 DC v. Hospital & Health Care Employees*, 533 F.2d 1204 (D.C.Cir. 1976).

Id. at 624 (emphasis in original).[14]

These two legislative purposes, promoting industrial stability and holding unions accountable for the agreements they have made, were found to be complementary: "Surely Congress could conclude that the enforcement of the terms of union constitutions -- documents that prescribe the legal relationship and the rights and obligations between the parent and affiliated locals -- would contribute to the achievement of labor stability." *Id.* Thus, the *Plumbers* Court did not require further proof that enforcement of a particular constitutional provision would have an additional impact on labor stability beyond that inherent in enforcing union constitutions.

Acknowledging that "there is no specific legislative history on [the] phrase ["contracts between labor organizations"] to explain what Congress meant," *id.* at 623, the Court found that union constitutions were familiar to Congress when it enacted §301(a), and that the broad inclusive language of §301(a) did not exclude constitutions from the general term "contracts." *Id.* at 625. Thus, the Court held that since the statute on its face encompassed union constitutions, and there was no indication of a countervailing legislative intent or purpose, actions for violation of union constitutions are subject to federal court jurisdiction under §301(a).[15]

[14] Congress was concerned that unions were not legal entities under the common law of many states. Thus, some states required service on each member of the union in order to initiate a lawsuit; some states did not enforce damage awards against union funds. *See Plumbers*, 452 U.S. at 624. *See also* S.Rep. No. 105, *supra*, at 15-18; H.R.Rep. No. 245, 80th Cong., 1st Sess. 108-09 (1947). 1 LMRA Leg. Hist. 399-400.

[15] Even before *Plumbers* was decided, numerous state courts had characterized union constitutions as enforceable contracts between labor

(continued...)

In addition, *Plumbers* rejected the argument that allowing suits in federal court for violations of union constitutions would result in undue interference with the internal affairs of the unions. *Id.* at 625-26. First, when Congress enacted the LMRDA in 1959, it imposed stringent requirements on the governing processes of unions and voided any conflicting constitutional provisions.[16] Second, as this Court emphasized in *Plumbers*, "[t]here is an obvious and important difference between substantive regulation by the National Labor Relations Board of internal union governance of its membership, and enforcement by the federal courts of freely" enacted union constitutions. *Id.* at 626. That same distinction applies with equal force here.

B. Union Members May Sue Under §301(a) For Violations Of Union Constitutions

The Court in *Plumbers* expressly declined to decide whether "individual union members may bring suit on a union constitution against a labor organization." 452 U.S. at 627 n.16. The courts of appeals have split on the issue although, since *Plumbers*, the weight of authority favors finding federal jurisdiction for such suits.[17]

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[15] (...continued)
organizations. *See, e.g., Napier v. Firefighters, Local 2*, 293 N.E.2d 384, 386 (Ill. 1973); *Elfer v. Marine Engineers*, 154 So. 32, 35 (La. 1934); *Clothing Workers v. Kaser*, 6 S.E.2d 562, 564 (Va. 1939). *See also Machinists v. Gonzales*, 356 U.S. 617, 619 (1958). *See generally* Summers, "The Law of Union Discipline: What the Courts Do in Fact," 70 Yale L.J. 175, 179 (1960).

[16] Section 101(b) provides: "Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect," 29 U.S.C. §411(b). *See* Ross and Taft, "The Effect of the LMRDA upon Union Constitutions," 43 N.Y.U.L.Rev. 305 (1968).

[17] *Compare Desantiago v. Laborers, Local 1140*, 914 F.2d 125 (8th Cir. (continued...)

In *Smith v. Evening News Ass'n*, 371 U.S. 195, this Court held that individual employees could sue for breach of a collective bargaining agreement between a union and employer even though the employee is not a party to the contract. The Court treated employees, whose "rates of pay and conditions of employment are a major focus of the negotiation and administration of collective bargaining contracts," *id.* at 200, as third party beneficiaries of the contract entitled to sue under §301 (a) for enforcement.

Applying the same reasoning, the Third Circuit has held that §301(a) authorizes suits by individual union members seeking enforcement of union constitutions: "If individual union members are third party beneficiaries of collective bargaining agreements, it follows that they have the same status with respect to union constitutions .... If third party beneficiaries of the one agreement can sue in federal court, then so can third party beneficiaries of the other." *Lewis v. Teamsters, Local 771*, 826 F.2d at 1314.

In similar fashion, this Court has "not taken a restrictive view of *who* may sue under §301(a)," *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 25 n.28 (1982). Suits have been allowed by a union against third parties for tortious interference with a collective bargaining agreement, *Plumbers Local 472 v. Georgia Power Co.*, 684 F.2d 721 (11th Cir. 1982); *Wilkes-Barre Publishing Co. v. Newspaper Guild, Local 120*, 647 F.2d 372 (3d Cir. 1981), *cert. denied*, 454 U.S.

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[17] (...continued)
1990); *Pruitt v. Carpenters, Local Union No. 225*, 893 F.2d 1216 (11th Cir. 1990); *Lewis v. Teamsters, Local 771*, 826 F.2d 1310 (3d Cir. 1987); *Kinney v. IBEW*, 669 F.2d 1222 (9th Cir. 1981); *Abrams v. Carrier Corp.*, 434 F.2d 1234 (2d Cir. 1970), *cert. denied*, 401 U.S. 1009 (1971); *with Alexander v. Operating Engineers, 624 F.2d 1235*; *Trail v. Teamsters*, 542 F.2d 961; *Adams v. Boilermakers*, 262 F.2d 835 (10th Cir. 1958). *See generally* M. Malin, *supra*, at 9-12.

1143 (1982); by trustees of a pension trust agreement incorporated into the collective bargaining agreement, *Schneider Moving & Storage Co. v. Robbins*, 466 U.S. 364 (1984), and by a union against a nonsignatory joint committee established to administer a contract, *Painting & Decorating Contractors Ass'n v. Painters & Decorators Joint Committee*, 717 F.2d 1293 (9th Cir. 1983), *cert. denied*, 466 U.S. 927 (1984). *See generally* Bureau of National Affairs, *The Developing Labor Law* 435-38 (1989).

Furthermore, the legislative purposes of the LMRA support conferring federal court jurisdiction on suits to enforce union constitutions whether brought by union members or unions. One of the stated purposes of the LMRA, set forth in §1(b), is "to protect the right of individual employees in their relations with labor organizations." §1(b), 29 U.S.C. §141(b). Relations between members and their unions are defined primarily by the union constitution. Although the legislative history of §301(a) does not refer to union constitutions, it is certainly reasonable to assume that one of the means by which Congress intended to protect the rights of individual union members was to provide for federal court jurisdiction of suits for violations of union constitutions. *Cf. Plumbers*, 452 U.S. at 624-25.[18]

Finally, allowing union members to sue in federal court for violations of union constitutions will promote judicial efficiency. Lawsuits brought by union members challenging union actions may raise a variety of claims under the LMRDA, the union constitution, and the duty

[18] The jurisdictional barriers to successful litigation against union defendants in effect in many states when the LMRA was adopted, *see* n.13, *supra*, applied whether the lawsuit was brought by an employer seeking to enforce a collective bargaining agreement or a union member seeking to enforce a union constitution. In fact, such requirements fell more heavily on union members who had fewer resources for litigation than most employers.

of fair representation. The facts of the instant case are prototypical: petitioner claims the union discriminated against him in job referrals. He alleges violations of the LMRDA, the duty of fair representation and the union constitution. It would be far more efficient to resolve all the claims in one forum, rather than requiring petitioner to pursue his claims under the union constitution in a separate state court action.

CONCLUSION

For the reasons stated above, the judgment of the court of appeals should be reversed.

Respectfully submitted,

Steven R. Shapiro
(*Counsel of Record*)
John A. Powell
Helen Hershkoff
American Civil Liberties Union Foundation
132 West 43 Street
New York, New York 10036
(212) 944-9800

Susan M. Jennik
Association for Union Democracy
500 State Street
Brooklyn, New York 11217
(718) 855-6650

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